

Asylum: Eurodac system for the comparison of fingerprints of third-country nationals or stateless applicants; requests for comparison with Eurodac data. Recast

2008/0242(COD) - 10/09/2009 - Modified legislative proposal

At its sitting on 7 May 2009, the European Parliament adopted, subject to a number of amendments, a legislative resolution endorsing the Commission's recast proposal of the EURODAC system.

The Commission now presents a draft amended regulation in order to take into account the European Parliament's amendments at first reading and the results of negotiations in the Council. It also introduces the possibility for Member States' law enforcement authorities and Europol to access the EURODAC central database for the purposes of prevention, detection and investigation of terrorist offences and other serious criminal offences.

Objectives of the new proposed measure: in case a person suspected to have committed an act of terrorism or a serious crime has been previously registered as an asylum seeker but is not in any other database or is only registered with alphanumeric data (which might be incorrect, for example if that person has given a wrong identity or used forged documents), the only information available to identify him/her might be the biometric information contained in EURODAC. The intention is now to allow consultation of EURODAC by law enforcement authorities for the purpose of prevention, detection and investigation of terrorist offences and other serious criminal offences. In order to do this it is necessary to amend the EURODAC Regulation to include explicitly this additional purpose.

The amended proposal also introduces a series of measures including a bridging clause to permit this access for law enforcement purposes by providing a link between a third pillar instrument (Council Decision No [.../...]JHA [*EURODAC law enforcement Decision*]) and the present first pillar Regulation. Other amendments include: (i) the designation of authorities which are allowed to access EURODAC for a law enforcement purpose and the guarantee that they will also comply with the provisions on responsibility for data use and data security; (ii) the introduction of an obligation to collect statistics on the number of law enforcement searches and the number of hits these produced; (iii) a technical amendment to the EURODAC central system, ie. a new functionality to search on the basis of a so-called latent (a latent print is the chance reproduction of the friction ridges deposited on the surface of an item) in order to better facilitate the purposes of law enforcement access; (iv) a provision to ensure that upon taking his or her fingerprints, the data subject is also informed about the possibility of his or her data be accessed for law enforcement purposes; (v) the provision of an overall evaluation of the EURODAC Regulation so as to include the mechanism of access for law enforcement purposes.

Need for the European Parliament to be newly consulted at first reading: since the European Parliament issued its report on the recast proposal in first reading on 7 May 2009, it is understood that it should have the possibility of issuing a new report in first reading on the current proposal. The reconsultation only concerns new measures.

Modifications introduced following the European Parliament resolution: overall, the Commission considers that the amendments are for the most part acceptable or partly acceptable, with some exceptions.

Amendments partly accepted are as follows:

- the amendment which aims to split the deadline for taking and sending fingerprints in two parts, is not acceptable, since such an approach could create practical difficulties for Member States. However, it is accepted to extend the deadline for transmission to 72 hours (in conformity with the EP proposal of 48 hours plus 24 hours);
- the first part of the amendment adding a new reference to the reference number used when searching a transaction on a third country national or stateless person found illegally present in a Member State is accepted.

Amendments which cannot be accepted concern those which:

- suggest that persons who obtained long term residence status in accordance with [Council Directive 2003/109/EC](#) concerning the status of third-country nationals who are long-term residents (Long-term Residence Directive) be erased from EURODAC: the Long-term Residence Directive explicitly excludes from its scope of application the applicants and beneficiaries of international protection: for this reason it is not possible to accept those amendments;
- concern the competences of the Management Authority: the amendment is not accepted since the purpose of the Article is not to determine the scope of the IT Agency, but to clarify that the Management Authority referred to in the present Regulation is the same as the one referred to in the SIS II and VIS Regulations;
- propose to add a reference to some additional articles of Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted in Article 16 (2) of the present proposal, is not considered necessary, as those situations are already covered in the current drafting;
- aim to introduce the obligation to inform the European Data Protection Supervisor (EDPS) of each 'false hit'. This is deemed superfluous;
- aim to introduce a provision prohibiting the transfer of data to authorities of third countries. The Regulation in force is already clear that such data cannot be accessed by third countries. Therefore this amendment is not accepted;
- aim to introduce an obligation for Member States to notify changes in their list of authorities within a maximum of 30 days after the change took effect. This is regarded as an unnecessary burden and the deadline proposed as unrealistic.

Modifications introduced following the outcome of negotiations in the Council: among the amendments stemming from the interinstitutional agreement on this text, one can note the following:

- a new Article providing information to Member States on the status of the data subject. It foresees that Member States are also informed if a given person, whose data is stored in the database, was transferred following a take charge procedure, or if he or she left the territory of the Member States, either voluntarily or as the result of a return decision or removal order.
- amendments introduced in the article concerning the storage of data aim to clearly spell out which third country nationals or stateless persons have to be fingerprinted and at what point in time. The introduced change will help harmonising practices between Member States and ensure that as soon as a person is allowed entry on the territory of the Member States, his/her fingerprints need to be taken and sent to the EURODAC database.

BUDGETARY IMPLICATIONS: the present proposal entails a technical amendment to the EURODAC central system in order to provide for the possibility to carry out comparisons for law enforcement purposes. The cost estimate of **EUR 2 415 million** includes costs of 3 years of technical maintenance, and consists of IT-related services, software and hardware and would cover the upgrade and customisation to allow searches for law enforcement purposes and also the changes for the original asylum purpose unrelated to law enforcement access.